

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

WASHINGTON INTERNATIONAL
INSURANCE COMPANY,

Plaintiff,

v.

ARTEK BUILDERS, INC.,

Defendant

CIVIL ACTION NO. 05-CV-10437-GAO

**WASHINGTON INTERNATIONAL INSURANCE COMPANY'S ANSWER TO
COUNTERCLAIM**

The Plaintiff, Washington International Insurance Company ("WIIC"), responds to the Counterclaim of the Defendant Artek Builders, Inc. ("Artek") as follows:

1. WIIC admits the allegations contained in paragraph 1 of the Counterclaim.
2. WIIC admits the allegations contained in paragraph 2 of the Counterclaim.
3. WIIC admits the allegations contained in paragraph 3 of the Counterclaim.
4. WIIC admits that Artek was incorporated in the Commonwealth of Massachusetts on or about April 14, 2000. In further answering, WIIC admits that J.S. Luiz 3rd, Inc. ("Luiz") was the President, Treasurer, Clerk and sold director and shareholder of Artek. WIIC states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 4 of the Counterclaim.
5. WIIC states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the Counterclaim.
6. WIIC states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the Counterclaim.

7. WIIC states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the Counterclaim.

8. WIIC states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Counterclaim.

9. WIIC admits the allegations contained in paragraph 9 of the Counterclaim.

10. WIIC admits that Artek performed certain work under the subcontracts. In further answering, WIIC states that it is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 10 of the Counterclaim.

11. WIIC admits the allegations contained in paragraph 11 of the Counterclaim.

12. WIIC denies the allegations contained in paragraph 12 of the Counterclaim.

13. WIIC states that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Counterclaim.

14. Paragraph 14 states a conclusion of law to which no response is required.

15. WIIC admits that Artek filed nine proofs of claims. In further answering, WIIC denies the remaining allegations contained in paragraph 15 of the Counterclaim.

16. Paragraph 16 states a conclusion of law to which no response is required.

17. Paragraph 17 states a conclusion of law to which no response is required.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Defendant's claims are barred because Artek is an insider and/or alter ego and is unable to recover under Luiz's payment bond.

SECOND AFFIRMATIVE DEFENSE

The Defendant's claims are barred where several of the subcontracts were issued after the work was allegedly completed.

THIRD AFFIRMATIVE DEFENSE

The Defendant's claims are barred due to material breaches of the subcontracts.

FOURTH AFFIRMATIVE DEFENSE

The Defendant's claims are barred because it does not meet the definition of claimant as defined in ch. 149, §29.

FIFTH AFFIRMATIVE DEFENSE

The Defendant's claims are barred by the terms and conditions of the payment bond.

SIXTH AFFIRMATIVE DEFENSE

The Defendant may not recover because they have failed to comply with the conditions precedent to the Payment Bond.

SEVENTH AFFIRMATIVE DEFENSE

WIIC hereby asserts and incorporates all defenses available to its principal, J.S. Luiz 3rd, Inc.

Respectfully Submitted,
Washington International Insurance
Company,
By its attorneys,

/s/ Paula-Lee Chambers
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Dated: April 19, 2005

CERTIFICATE OF SERVICE

I, Paula-Lee Chambers, hereby certify that on April 19, 2005, I served the following by
first class mail on the following:

Gerald E. Johnson, Esquire
Swansea Professional Park
1010 Grand Army Highway
Swansea, MA 02777

/s/ Paula-Lee Chambers
Paula-Lee Chambers, BBO# 566888